

Litigating Competency

007 ways to tell Dr. No

Atty. Eric Heywood

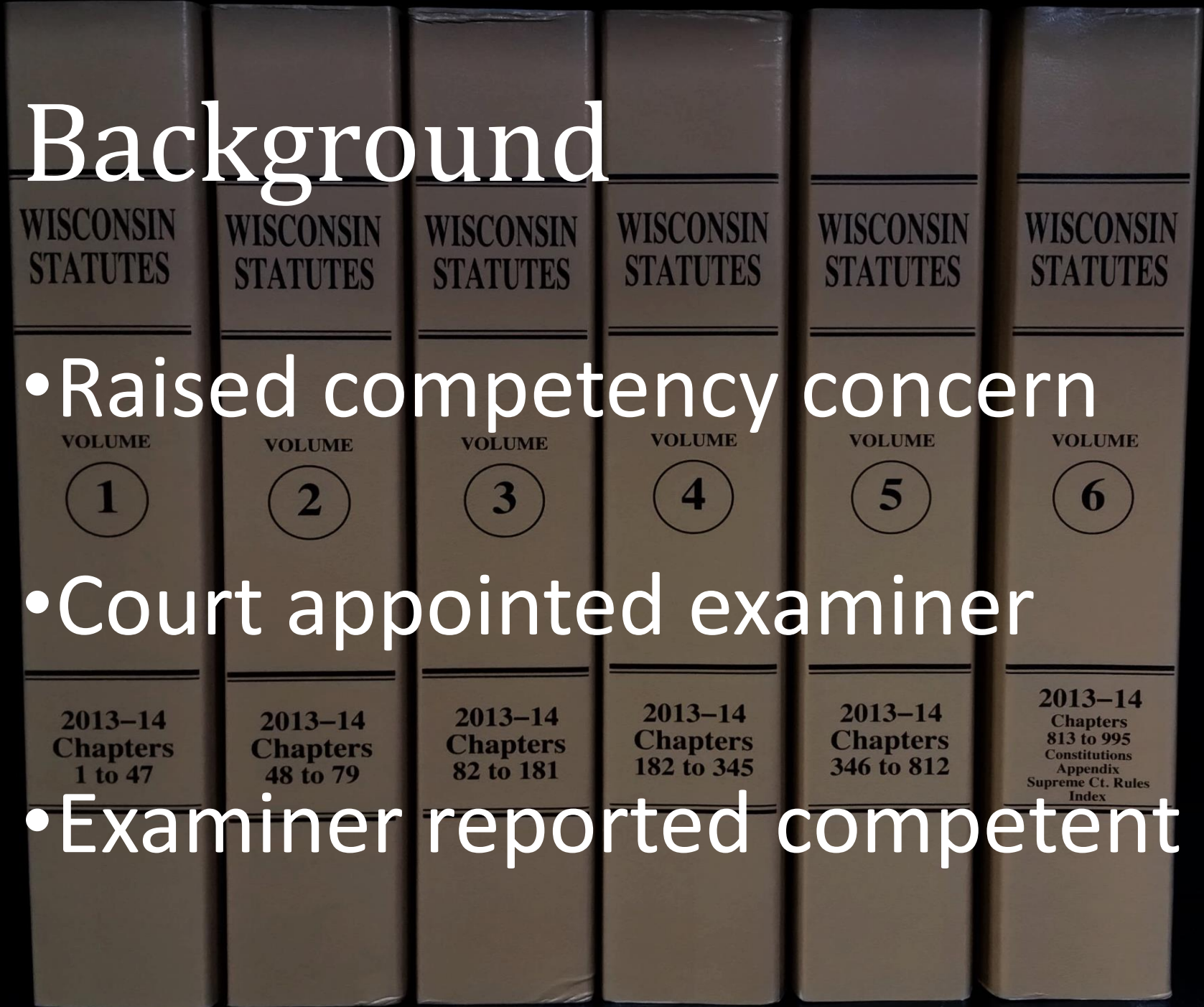
Oshkosh SPD

MISSION



Background

- Raised competency concern
- Court appointed examiner
- Examiner reported competent



Dusky Standard

Understand

-AND-

Assist

Standard for Competence

- Understand the proceedings
- Assist with defense



Burden for Competence

- On DA
- Greater weight of credible evidence



Objectives

- Protect client's rights
 - Fundamental fairness
 - Client not present
- Understand and challenge examiner's report

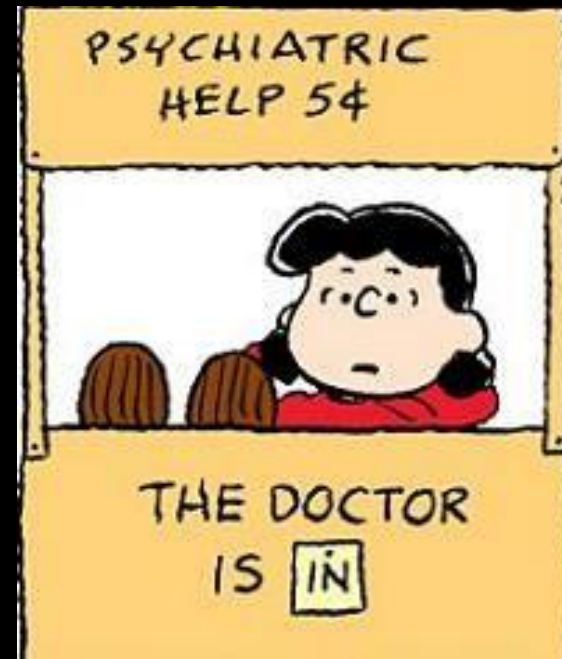
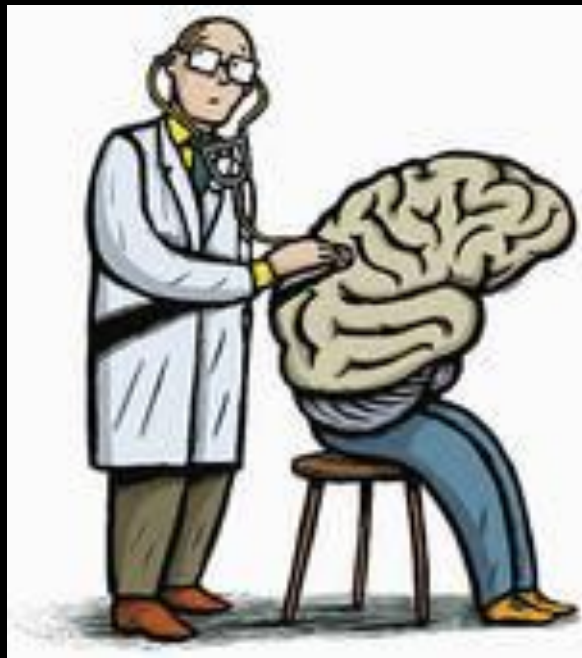


BACKUP



Get Another Examiner

- Request court appoint
- Retain own expert



007 WAYS



001 - Client
002 - Interviews
003 - Records
004 - Tests
005 - Findings
006 - Understand
007 - Assist



001 – Client Examination

- Time spent with client
- Type of questions
- Cultural bias

002 – Other Interviews

- Attorney
- Family
- Jail staff
- Treatment providers



003 – Records Reviewed

- Medical and treatment
- Criminal justice
- No competency presumption
- *Daniel*, 2015 WI 44

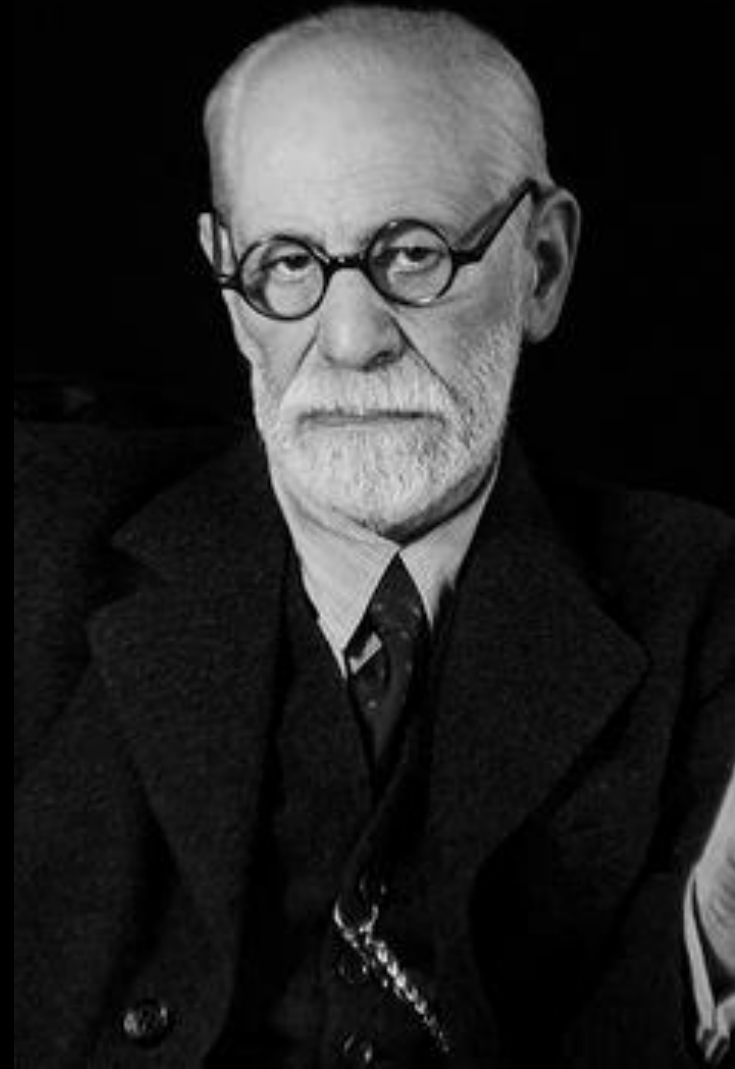


004 – Tests Administered

- Competency
 - CAST-MR
 - ECST-R
 - MacCAT-CA
- Verbal
- Memory
- Cognition and Intelligence

005 – Clinical Findings

- Symptoms
- Deficits
- Behaviors
- Malingering



006 – Understand

- Adjudicative competence
 - Who and what
- Rational and Factual
 - More than rote knowledge

007 – Capacity to Assist

- Decisional competence
 - Why (and how)
- Theory of mind
- Apply knowledge to case
 - Reasoning and communication

ARGUMENT



Determine Competency

- *Daubert*: facts, methods, application
- Differential findings
- Legal complexity
- Due process
- *Haskins* – judicial determination



Likely to Become Comp.

- Burden: DA - greater weight?
- DHS treatment
 - Community
 - Inpatient
 - Jail



License to Pill



Postconviction

A background image showing a brown football and a pair of red football gloves lying on a green grass field. The football is in the upper right, and the gloves are in the lower center.

- Retrospective competency
 - Difficult determination
- Appellate review
 - Clearly erroneous standard

Questions?

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